

**BEFORE THE MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of

Petition of Charter Fiberlink MA-CCO, LLC
for Arbitration of an Amendment to the
Interconnection Agreement Between Verizon-
Massachusetts, Inc. and Charter Fiberlink MA-
CCO, LLC Pursuant to Section 252 of the
Communications Act of 1934, as Amended

D.T.E. No. 06-56

**CHARTER FIBERLINK MA-CCO, LLC
MOTION TO COMPEL THE PRODUCTION OF INFORMATION AND
DOCUMENTS FROM VERIZON MASSACHUSETTS**

Charter Fiberlink MA-CCO, LLC ("Charter") by and through its attorneys hereby moves for an order from the Department to compel Verizon Massachusetts to produce information and documents requested in Charter's first set of data requests to Verizon. Due to the very concise schedule in this proceeding Charter asks the Department to treat this motion on an expedited basis and to order Verizon to produce the information identified herein immediately.

I. INTRODUCTION

Charter served its first set of data requests ("Charter's data requests") on Verizon Massachusetts ("Verizon") on August 4, 2006. On August 14, 2006 Verizon delivered its response by a document that objects to nearly every request posed by Charter and which fails to respond to the vast majority of Charter's requests. Verizon filed a supplement to its responses on August 16, 2006. This supplemental response, although purportedly

providing additional information, also fails to provide suitable responses to Charter's data requests. Broadly speaking, Verizon claims that the information sought is not relevant to the disputed issues in this proceeding. As described below, Verizon is wrong.

Charter's representatives have attempted to resolve their dispute with Verizon's representatives. However, it has been unable to do so at this time. Accordingly, Charter moves for an order compelling Verizon to respond to Charter's data requests.

II. INFORMATION RELEVANT TO THE RESOLUTION OF DISPUTED ISSUES IN THIS PROCEEDING

At its core, this proceeding is a case about when, where, and how two LECs in Massachusetts should build and operate a fiber meet point arrangement. The case arose after Charter and Verizon spent many months attempting to negotiate terms governing fiber meet points. Unable to reconcile Verizon's proposed limitations and conditions on fiber meets point Charter's only recourse was to file for arbitration with the Department.

Verizon's unreasonable demands included an attempt to limit Charter's ability to establish a fiber meet point without first having satisfied certain unreasonable conditions demanded by Verizon. Verizon insisted that Charter pay Verizon for the costs of Verizon's fiber meet point equipment, labor and engineering if other conditions (established by solely Verizon) did not materialize. In this way, Verizon attempted to force Charter to "guarantee" the costs of the fiber meet point. Moreover, Verizon demanded that the fiber meet point be built according to its own unilaterally-determined limitations (no greater than three miles from a Verizon central office and with no more than five hundred feet of Verizon-provided fiber). Finally, Verizon has steadfastly refused to exchange certain types of traffic over the fiber meet point unless Charter

agrees to pay Verizon for the privilege of delivering such traffic to Verizon's network. Verizon's unbending approach to these questions has essentially meant that Verizon would dictate when the fiber meet point would be built, where, how it would be built, how the traffic would flow over it, and at what cost to Charter.

In an attempt to develop its affirmative legal and factual case on the issues arising from Verizon's demands Charter sought discovery of Verizon on questions related to these core issues. Charter did so in order to assess Verizon's, to challenge the contentions of Verizon's witness, and to present the most effective evidentiary record available. This is, of course, consistent with Charter's rights under Massachusetts law. As the Department has explained,

Under G.L. c. 30A, § 10, which sets forth the procedural rights of parties in Massachusetts administrative proceedings, the Department must afford all parties the opportunity for a full and fair hearing. This includes the parties' right to acquire information from each other in order to participate meaningfully in an adjudicatory proceeding. ***Parties need access to relevant materials during discovery in order to assess the claims of other parties, to challenge the contentions of other parties' witnesses, and to make the most effective evidentiary record they can.*** In this way, the Department is able to come to a well-reasoned decision on an ample evidentiary record. See D.P.U. 97-95, Interlocutory Order at 9-10.

2001 Mass. PUC LEXIS 91, 53-55 (Mass. DTE 2001) (emphasis added).

Thus, Charter's discovery requests relate to the core issues raised by Verizon when it attempted to unilaterally condition and limit Charter's ability to establish a fiber meet point arrangement in Massachusetts. Charter seeks this information to develop its own affirmative case, and to develop the factual record in this proceeding.

A request-by-request discussion of Verizon's responses to Charter's discovery requests are set forth below. Generally speaking, Verizon objects to data requests seeking information relevant to three separate issues: (1) other fiber meet point

arrangements and the conditions and limitations imposed on such arrangements; (2) Verizon's costs of building and operating a fiber meet point arrangement; and (3) the location and extent of fiber optic facilities deployed by Verizon. Each of those categories of data requests, and Verizon's objections thereto, are addressed in detail below.

III. SPECIFIC DATA REQUESTS THAT VERIZON SHOULD BE COMPELLED TO ANSWER

A. Data Requests Concerning Other Fiber Meet Point Arrangements and the Conditions and Limitations Imposed On Such Arrangements

Certain data requests posed by Charter address the question of where, when and how Verizon has established fiber meet point arrangements (or fiber optic OC3 systems) with other carriers in Massachusetts. The information sought generally goes to the existence and location of such fiber meet point arrangements, and the conditions and limitations imposed on them. The question of whether such arrangements exist, and whether they are similarly burdened with the same types of conditions and limitations that Verizon proposes here, is obviously relevant to the resolution of Charter Issues 1, 2, 3 and 4 in this proceeding. Each of those issues raises the question of whether Verizon should be allowed to impose certain limitations or conditions (governing questions of when, where and how to pay for these arrangements) upon the fiber meet point arrangement with Charter. In this regard, under Section 251(c)(2)(D) of the Telecommunications Act of 1996 Verizon must provide interconnection on rates, terms and conditions that are *just, reasonable and nondiscriminatory*.¹

In order for the Department to determine whether Verizon's proposed limitations and conditions are just, reasonable and nondiscriminatory it must know whether, and to

¹ 47 U.S.C. § 252(c)(2)(D) (emphasis added).

what extent, Verizon imposes such conditions on other competitive LECs in Massachusetts. Thus, the terms, conditions and limitations imposed by Verizon on other fiber meet arrangements with other LECs in Massachusetts is relevant to whether Verizon can reasonably be allowed to impose such limitations on Charter in this instance. For these reasons Charter seeks discovery of Verizon to determine whether Verizon imposes the same conditions and limitations it asks the Department to affirm in this proceeding.²

Each of Charter's data requests seeking information on this issue, and Verizon's objections, are discussed individually below.

Data Request 1.1

- 1.1 Identify and describe all fiber meet point arrangements established by Verizon in Massachusetts.
 - (a) With respect to each and every fiber meet point arrangement identified in response to this data request, identify the other party to the fiber meet point arrangement, i.e. local exchange carrier, interexchange carrier, or other entity.
 - (b) With respect to each and every fiber meet point arrangement identified in response to this data request identify the physical location of the arrangement in Massachusetts by reference to street address, municipality, county or other general geographic reference.

Verizon Response:

Verizon objects to this Information Request to the extent it seeks or Verizon's reply necessarily would reveal individual carrier proprietary information.

Notwithstanding its objection, Verizon states that it has a total of eight fiber meet point arrangements established in Massachusetts with a total of four local exchange carriers.

Verizon's limited response contains only part of the information sought, how many fiber meet point arrangements in Massachusetts. Verizon does not identify the other LEC involved in the fiber meet arrangement, nor does Verizon identify the physical location of the fiber meet. Verizon's sole objection here is that responding to the data

² The nature and extent of Verizon's fiber meet point arrangements with other carriers, including any restrictions or conditions on the use of such meet points, goes to the question of whether Verizon's proposals here are nondiscriminatory. Such conditions are also relevant to the question of whether Verizon's proposed conditions in this case are just and reasonable.

request would reveal "carrier proprietary information." However, it is obviously impossible to assess whether Verizon's proposed conditions in this case meet Verizon's nondiscrimination obligation without this information.

Pursuant to the Arbitrator's procedural schedule the parties are currently working to finalize a joint protective order for entry by the Department to cover the release of confidential information in this proceeding. Once that order is in place, Verizon should be ordered to provide a complete response to Charter's data request, including the identity and location of such additional fiber meet arrangements in Massachusetts.

Data Requests 1.8 and 1.9

- 1.8 State whether Verizon has ever established a fiber meet point arrangement with another local exchange carrier (incumbent LEC or competitive LEC), IXC or other entity before that point in time where the traffic volume between Verizon and the other entity had reached a DS3's worth of traffic volume.

Verizon Response:

Verizon objects to this Information Request on the grounds that information on fiber meet arrangements in any state other than Massachusetts is beyond the jurisdiction of the Department and is not relevant to this proceeding.

Notwithstanding its objection, Verizon states that the requested information is not readily available. Verizon does not track or retain the requested information in any system or database that would enable the company to provide a responsive reply.

- 1.9 To the extent that Verizon's response to data request 1.8 is anything other than an unequivocal "none", identify all instances in which such a fiber meet point arrangement was established. Include in that response the name of the other entity, the date the fiber meet point arrangement was established and the general geographic location of the fiber meet point arrangement

Verizon Response:

Please see Verizon reply to Charter 1.8.

Verizon objects to Data Request 1.8 on the grounds that the data request seeks information outside of Massachusetts, is not relevant to this proceeding, and is not conveniently available. These objections are groundless.

This data request is directly relevant to a resolution of Charter Issue 1 in this proceeding. That issue raises the question of whether Verizon can condition Charter's ability to request a fiber meet point on first having reached or established a threshold of traffic equal to a DS3 utilization level. Verizon argues that this condition is necessary and reasonable in that it ensures Verizon will not have to build a fiber meet point arrangement that is not cost justified. Whether Verizon has built such arrangements before it has reached a DS3's worth of traffic with other LECs is relevant to the question of whether Verizon's proposed condition is just, reasonable and nondiscriminatory.³

Moreover, Verizon has repeatedly argued that the cost of deploying a mid-span fiber meet arrangement can be substantial and such costs cannot be justified from an investment or network efficiency perspective when traffic volumes aren't sufficient. The information sought in these data requests addresses the question of whether Verizon has previously established network arrangements in a manner that contradicts its purported network efficiency principles cited in this case.

The fact that the data request is not limited to Massachusetts is no reason to sustain Verizon's objection. First, Verizon has eight meet points within Massachusetts, so it should obviously respond with respect to those meet points. But unless Verizon has unique requirements in Massachusetts –which would be useful to know– there is no reason to withhold that information.

As to Verizon's claim that this information is not "readily available," that response is itself telling. Specifically, it means that Verizon has not obviously viewed the

³ Of course, if Verizon requires this condition of other CLECs that, in and of itself, does *not* establish that the condition is just or reasonable. Determining whether or not such conditions exist is simply the first step in answering the question of whether these conditions are just, reasonable and nondiscriminatory.

burdensome conditions it seeks to impose on Charter as even important enough to track. Charter requests that the Department order Verizon to either fully answer this question or be deemed for purposes of this proceeding to admitting that it has not imposed the DS3-related traffic requirement on other interconnected carriers. Charter does not seek a detailed traffic record here, but simply a statement of whether Verizon has in the past undertaken fiber meet arrangements before such time that a DS3's worth of traffic was exchanged.

It is useful to bear in mind that the standard for access to discoverable information is broad. As the Department once noted:

The purpose for discovery is to enable parties and the Department to gain access to all relevant information and ensure that a complete and accurate record is compiled. 220 C.M.R. § 1.06(6)(c)(1). The standard for determining whether a document is discoverable is much broader than the standard for admission into evidence. Information is discoverable if it is reasonably calculated to lead to the discovery of admissible evidence. Mass. R. Civ. P. 26(b); D.P.U. 92-8C-A, Order on Appeal at 31.

2001 Mass. PUC LEXIS 91, 53-55 (Mass. DTE 2001).

Accordingly, as the Department has noted, the standard for what is discoverable is much broader than the standard for admission into evidence. With that standard in mind, it is clear that the information sought by Charter here is relevant to the disputed issues in this proceeding. The Department should therefore order Verizon to respond to the data requests and explain whether it has ever established a fiber meet point arrangement before a DS3's worth of traffic was exchanged with the other LEC, and if so to provide the details attendant to such arrangement. If it cannot or will not do so, it should be deemed not to have imposed such requirements on other entities.

Data Request 1.10

- 1.10 Identify and describe all fiber meet point arrangements established by Verizon with another local exchange carrier (incumbent LEC or competitive LEC), IXC or other entity which Verizon contends are currently underutilized, or do not represent an efficient use of network resources.

Verizon Response:

Verizon objects to this Information Request on the grounds that information on fiber meet arrangements in any state other than Massachusetts is beyond the jurisdiction of the Department and is not relevant to this proceeding. Verizon also objects to this Information Request to the extent it seeks individual carrier proprietary information.

Notwithstanding its objection, Verizon contends that its existing fiber meet point arrangement with Charter in Wausau, WI, is underutilized and does not represent an efficient use of network resources. Verizon and Charter agreed to build an OC 12 fiber meet point arrangement in Wausau, WI. Charter has not achieved traffic volume that would represent an efficient use of network resources for an OC 12 system.

Verizon provides only a partial response to this data request, choosing to single out Charter's other fiber meet point arrangement as underutilized. Verizon's objections should be over ruled because Charter's data request does not seek information outside of Massachusetts, and the parties should soon have a joint protective order for entry by the Department in place. The question of whether Verizon currently has fiber meet arrangements that are underutilized is relevant to the question of whether Verizon's proposed conditions on when to establish a fiber meet (Charter Issue 1) is just, reasonable and nondiscriminatory. For that reason the Department should order Verizon to provide a complete, and detailed, response to this request.

Data Requests 1.12 and 1.13

- 1.12 Identify and describe all OC3 fiber optic systems that Verizon has deployed in Massachusetts, or any other state, which currently carry traffic volumes below a DS3 level.

Verizon Response:

Verizon objects to this Information Request to the extent it requests information outside of Massachusetts on the grounds that such information is not relevant to this proceeding and is beyond the jurisdiction of the Department. Verizon also objects to this Information Request to the extent it requests information from Verizon entities other than Verizon New England Inc. (d/b/a Verizon Massachusetts) on the grounds that such entities are not parties to this proceeding. Verizon further objects on the grounds that information

responsive to this request is not readily available and would require a burdensome special study.

Without waiving its objections and in an effort to be responsive, Verizon states that many OC3 fiber optic systems that Verizon has deployed in Massachusetts are used to provide point-to-point special access services to customers and it is not possible for Verizon to measure traffic on those systems. In addition, for those OC3 fiber optic systems that Verizon has deployed in Massachusetts to carry Verizon traffic, Verizon states that it does not routinely measure traffic over its fiber transport systems nor does it maintain usage studies of those systems in a centralized database that would enable Verizon to provide a responsive reply.

- 1.13 Identify and describe all OC3 fiber optic systems that Verizon has deployed in Massachusetts, or any other state, which have at any time in the past carried traffic volumes below a DS3 level.

Verizon Response:

Verizon objects to this Information Request to the extent it requests information outside of Massachusetts on the grounds that such information is not relevant to this proceeding and is beyond the jurisdiction of the Department. Verizon also objects to this Information Request to the extent it requests information from Verizon entities other than Verizon Massachusetts, Inc., on the grounds that such entities are not within the jurisdiction of the Department.

Without waiving its objections and in an effort to be responsive Verizon states that it does not routinely measure traffic over its fiber transport systems nor does it maintain usage studies of those systems in a centralized database that would enable Verizon to provide a responsive reply.

Data requests 1.12 and 1.13, like those discussed above, raise the question of whether Verizon currently exchanges less than a DS3's worth of traffic over existing fiber meet point arrangements (or OC3 fiber systems). Verizon objects to the request for information outside of Massachusetts, but fails to note that the requests specifically seek information about such systems located in Massachusetts. In addition, Verizon again asserts that providing a response to these requests would require a special study.

But Verizon's objections are overstated. Moreover, Verizon has not met its burden of demonstrating that it would be an undue burden to produce information responsive to these requests. The Department has made clear that:

[p]arties face a heavy burden to establish that relevant information should be blocked from discovery. D.P.U. 92-8C-A, at 35, citing *220 C.M.R. § 1.06(6)(c)*, *Mass. R. Civ. P. 26(b)(1)*. The objecting party must make a sufficient showing of undue burden, providing details on such matters as the availability and location of materials and personnel needed to research and develop a response. D.P.U. 88-123, Hearing Officer's Ruling on Motion to Compel at 10. Merely because compliance would be costly or time consuming is not ordinarily a sufficient reason to avoid discovery where the requested information is relevant and necessary to discovery of evidence.

2001 Mass PUC LEXIS 63 (Mass. DTE 2001).

Charter does not believe a special study is required, but that in fact Verizon can respond to these requests through a query of network and traffic engineers responsible for the operations and management of such systems. The Department should therefore order Verizon to provide a complete, and detailed, response to these requests as they apply to arrangements or systems in Massachusetts.

Data Request 1.16

1.16 Identify and describe all instances where Verizon has initiated or implemented marketing or other similar campaigns in Massachusetts in the last five years in order to retain or "win-back" telephone subscribers.

Verizon Response:

Verizon objects to this Information Request on the grounds that the request seeks information that is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

This request seeks information on the existence of any Verizon marketing plans or campaigns to retain or win-back customers that may have left for other LECs in Massachusetts. The existence of such campaigns is relevant to the question of whether Charter's marketing operations are the sole contributor to the question of how much traffic is exchanged over the fiber meet, as Verizon has contended. Specifically, to support its cost obligation arguments, Verizon has repeatedly made the claim that it is

reasonable to require Charter to pay for Verizon's costs of the fiber meet arrangement because only Charter controls how much traffic will be exchanged over the fiber meet arrangement. If, however, Verizon has deployed marketing campaigns to retain or win-back telephone subscribers then those actions will also affect how much traffic is exchanged over the fiber meet. In other words, if Verizon is actively trying to retain subscribers, then Charter's own marketing efforts will be affected, which in turn could limit the amount of subscribers Charter is able to obtain. That, in turn, is directly relevant to the amount of traffic that will be exchanged over the fiber meet arrangement. Therefore, Verizon's own marketing campaigns will likely affect the question of how much traffic is exchanged over the fiber meet, an issue that is central to Charter Issues 1 and 2. For these reasons the Department should order Verizon to respond to this request.

B. Data Requests Seeking Information Concerning Verizon's Costs of Building and Operating a Fiber Meet Point Arrangement

Certain data requests posed by Charter address the question of what costs Verizon will incur in building and operating a fiber meet point arrangement with Charter. The information sought in such requests is directly relevant to the issues in Charter Issue 2, which asks who should pay for Verizon's costs of building and operating a fiber meet point arrangement. As the Department well knows, Verizon has proposed that Charter should be required to *pay for Verizon's costs* of building and operating the fiber meet point arrangement if a certain amount of traffic is not exchanged over the fiber meet point in a time certain. Verizon proposes several different scenarios whereby Charter would be liable to Verizon for Verizon's costs, including through the use of proxy tariff rates and an obligation for Charter to provide a letter of credit to Verizon. As demonstrated in

other filings, these Verizon proposals are very detailed (indeed dense) and full of very specific language detailing all of Charter's obligations to Verizon.

In spite of the fact that Verizon has offered detailed proposals to make Charter liable for Verizon's costs, Verizon has never demonstrated or explained what those costs would be. This is so even though Charter has repeatedly asked Verizon to provide an explanation of its anticipated costs of building and operating the fiber meet arrangement. However, Verizon has never provided such information. Accordingly, Charter is now forced to rely on discovery to obtain information on Verizon's costs. The data requests discussed below address that question and are directly relevant to the issue of who is obligated for what costs in building and operating the fiber meet arrangement (Charter Issue 2).

Data Request 1.19

- 1.19 State with specificity the actual cost to Verizon of the equipment identified in Verizon's response to data request 1.18. Include in this response an explanation of the basis for determining the "cost" of each component identified in the response.

Verizon Response:

Verizon objects to this Information Request on the grounds that the request seeks information that is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

In addition, the requested information is proprietary, confidential and competitively sensitive and will be furnished to parties other than the Department only in accordance with the terms of a fully executed protective agreement

Without waving its objection, Verizon states please see the attached proprietary response.

This data request asks for specific information on Verizon's costs of building and operating a fiber meet arrangement. The parties are currently working to finalize a joint protective order for entry by the Department and, once in place, Verizon's confidentiality objections will be moot.

As to Verizon's objections of relevancy, this data request goes specifically to the question of what costs Verizon proposes to impose upon Charter under certain conditions. Verizon has asked the Department to approve proposed contract language that would force Charter to become liable for potentially tens of thousands of dollars, but has never explained exactly how much liability Charter would assume. That is patently unreasonable and the requested information answers that question directly. For that reason the Department should order Verizon to produce a response to this data request.

Data Request 1.21

- 1.21 Identify and describe any discounts, price reductions, preferred payment arrangements or other arrangements that Verizon receives or obtains from the vendor(s) or equipment maker(s) from whom Verizon purchases equipment identified in Verizon's response to data request 1.18.

Verizon Response:

Verizon objects to this Information Request on the grounds that the request seeks information that is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects on the grounds that the request seeks proprietary, confidential and competitively sensitive information.

This data request asks for specific information regarding whether Verizon receives any price reductions, discounts costs or preferred payment arrangements for the equipment it purchases for fiber meet arrangements.

The parties are currently working to finalize a joint protective order and, once in place, Verizon's confidentiality objections will be moot. As to Verizon's relevancy objections, the question of whether Verizon receives discounts, price reductions or other preferred payment arrangements is directly relevant to the question of Verizon's costs of building a fiber meet arrangement. Verizon has made its costs a central issue in this case when it proposed that Charter be required to pay for Verizon's costs if a fiber meet arrangement is not fully utilized. Therefore, whether Verizon receives any price

reductions, discounts, or preferred pricing arrangements from its vendors will help Charter and the Department determine Verizon's actual costs.

Data Request 1.22

- 1.22 Identify and describe Verizon's specific costs of engineering, labor, and construction of the fiber meet point arrangements with Charter that are the subject of this proceeding. Separate and segregate Verizon's costs for each component of work described in this data request (i.e. engineering costs, labor costs, and construction costs should all be identified separately).

Verizon Response:

Verizon objects to this Information Request on the grounds that the request seeks information that is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

In addition, the requested information is proprietary, confidential and competitively sensitive and will be furnished to parties other than the Department only in accordance with the terms of a fully executed protective agreement. Without waiving its objection, Verizon states please see the following response and proprietary attachment.

In general terms the costs associated with Engineering Construction and Labor are as follows:

Engineering & Provisioning:

These are primarily the costs associated with Planning, Detail Design, Procurement, and Provisioning of the fiber meet arrangement. These include both internal (Verizon employee(s) and external (Contract Engineering) costs. Engineering costs also include the costs of the design and provisioning systems the engineers use as tools to track and communicate the request, plan and create the planning documents and engineering work orders, inventory the assets, and provision and assign the working fiber meet system.

Construction:

Construction costs include labor costs as well as any ancillary contract costs that may be required, like trenching, paving, traffic control, traffic studies, environmental impact statements, police details, environmental cleanup costs (contaminated manholes), restoration costs (landscaping), permitting, rights of way, etc. Labor costs are primarily the costs associated with physical building of the fiber meet arrangement (Technicians – Line, Splice, Equipment, System, Clerical etc.) as well as the systems to manage that labor force. Construction costs also include all material costs required for the fiber meet arrangement, including, but not limited, to the items listed in Verizon's response 1.19, as well as all miscellaneous material (e.g., through bolts, strand, anchors, guys, ground wire, environmental pillows, etc.) and the cost of managing those materials (transport, systems, warehousing).

Although Verizon provides a detailed description of the engineering and construction processes it claims are involved in building a fiber meet arrangement it does not identify the specific costs of doing so. Therefore, Verizon's response is incomplete.

The parties are currently working to finalize a joint protective order and, once in place, Verizon's confidentiality objections will be moot. As to Verizon's relevancy objections, again, this question seeks information about Verizon's costs. Verizon's costs are directly relevant to the question of whether it is just, reasonable and nondiscriminatory to require Charter to pay such costs (Charter Issue 2). Accordingly, the Department should order Verizon to respond to this request by identifying the costs (rather than simply describing processes that create such costs).

Data Request 1.23

- 1.23 Identify and describe Verizon's costs of interconnecting with Charter via other technically feasible methods of interconnection, including:
- (a) leased facilities;
 - (b) collocation arrangements.

Verizon Response:

Verizon objects to this Information Request on the grounds that the request is overly vague and ambiguous. For example, Verizon cannot determine the cost of interconnection through collection without knowing more specific information about the arrangement, such as the location of the collocation arrangement, the size of the collocation arrangement, the type of collocation (e.g., physical, virtual), and the quantity and type of cross connects.

This data request seeks information concerning Verizon's current costs of interconnecting with Charter via methods other than fiber meet point arrangements. The information sought here goes to the question of whether Verizon has any incentives to avoid moving to a fiber meet point arrangement with Charter. If Verizon is currently generating revenue by interconnecting with Charter, thru a leased facility arrangement,

that may explain why it is that Verizon has proposed so many onerous and unreasonable conditions and limitations on Charter's proposed fiber meet arrangement.

Verizon's response, however, completely ignores the fact that Charter currently interconnects via leased facilities. To the extent that the objection on vagueness applies at all, it would only apply with respect to costs associated with interconnecting via collocation, not leased facilities. The Department should therefore order Verizon to state its costs of interconnecting via leased facilities arrangements with Charter.

Data Request 1.30

- 1.30 Identify the amount of Verizon's stranded investment in Massachusetts. The term "stranded investment", as used here, shall have the same meaning as that term is used on page 7, lines 11 and 12, of the Testimony of Willet Richter on behalf of Verizon New England, Inc., d/b/a Verizon Massachusetts, as filed in D.T.E. Docket 06-56 on August 2, 2006.

Verizon Response:

Verizon objects to this Information Request to the extent it requests information from Verizon entities other than Verizon MA, Inc., on the grounds that such entities are not within the jurisdiction of the Department. Verizon further objects to this request to the extent it seeks information that is not relevant to this proceeding (i.e., to mid-span fiber meet point arrangements between Verizon and another carrier) and therefore not reasonably calculated to lead to the discovery of admissible evidence. Finally, Verizon objects on the grounds that information responsive to this request is not readily available and would require a burdensome special study.

The information sought in this data request is directly relevant to Charter Issue 2.

In the Testimony of Verizon witness Will Richter, Mr. Richter testifies (under Issue 2) that should Charter request a fiber meet arrangement and then fail to rapidly and successfully market its services there would be little or no traffic carried over those facilities. This data request asks Verizon to identify all previous instances when that situation has occurred.

Verizon's first objection, that the request seeks information from entities other than Verizon MA, is nonsensical. The request specifically asks Verizon to identify the

amount of "Verizon's stranded investment in Massachusetts." As such, the request is clearly limited to Verizon MA and *its* investments (not that of any other entity) in the state.⁴

Verizon's next objection, on relevancy, is without merit. Verizon's own witness raises the issue of possible stranded investment (*see* Testimony of W. Richter, on behalf of Verizon MA, at p. 7, lines. 9-12) under Charter Issue 2. The request simply asks Verizon to help Charter and the Department understand and quantify the claim of possible stranded investment. To the extent that such investments do in fact exist, it would be useful to know whether any such investment is the result of fiber meet arrangements that are not fully utilized.

Nor does Verizon's last objection stand up to the test. Surely it can not be true that a multi-billion dollar, Fortune 25 enterprise like Verizon does not have the accounting records to identify any so-called stranded investment. It simply strains credibility to suggest that simply identifying the existence of such an issue would require a special study. For these reasons the Department should order Verizon to respond to this request. If Verizon cannot or will not produce this information, then reference to stranded investment in testimony and briefs should be stricken.

Document Request 5

5. Any and all documents concerning Verizon's costs of purchasing and deploying equipment, fiber optic facilities, (including engineering, labor, and

⁴ We note that Verizon has created some confusion about what entity is involved here. In its response to Request 1.12 Verizon refers to "Verizon New England, Inc. (d/b/a Verizon Massachusetts)". Here Verizon refers to an entity apparently known as Verizon MA, Inc." On information and belief, at least historically, the relevant entity has indeed been Verizon New England, Inc., a single corporate entity serving several New England states using various d/b/a names. Verizon should be required to clarify the actual legal entity that is the ILEC in Massachusetts, including a listing of all other states that entity serves and the associated d/b/a/ names. Of course, to the extent that a single integrated entity serves multiple states Verizon's effort to limit its responses to data from Massachusetts rings hollow.

construction costs) of Verizon's fiber meet point arrangements in Massachusetts.

Verizon Response:

Verizon objects to this Document Request on the grounds that the request seeks information that is not relevant to this proceeding and not reasonably calculated to lead to the discovery admissible evidence. Verizon further objects on the grounds that the request seeks proprietary, confidential and competitively sensitive information.

This document request seeks any documents concerning the information sought in the data requests discussed above. Because those data requests are relevant to the disputed issues in this proceeding, and because it is likely that a protective order will be issued in this arbitration, the Department should order Verizon to produce information responsive to this document request.

Data Request 1.15

1.15 Identify and describe all instances where Verizon has deployed an OC3 system, or individual fiber optic facilities (including fiber optic terminals, OCx cards, fiber NIDs, add / drop multiplexing equipment), in one location and later re-deployed, moved or re-located such facilities for use in a second location.

Verizon Response:

Verizon objects to this Information Request to the extent it requests information outside of MA on the grounds that such information is not relevant to this proceeding and is beyond the jurisdiction of the Department. Verizon also objects to this Information Request to the extent it requests information from Verizon entities other than Verizon MA, Inc., on the grounds that such entities are not parties to this proceeding. Verizon further objects to this request to the extent it seeks information on all OC3 fiber systems Verizon has deployed for itself on the grounds that such information is not relevant to this proceeding (i.e., to mid-span fiber meet point arrangement between Verizon and another carrier) and therefore not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving its objections, Verizon states that the requested information is not tracked in any centralized system or database (or other format) that would enable Verizon to provide a responsive reply.

This data request is relevant to the question of Verizon's costs of establishing a fiber meet point arrangement. If Verizon has, in the past, deployed facilities or equipment and then redeployed such facilities or equipment that would demonstrate that

Verizon is capable of redeploying facilities and equipment that are deployed for one purpose but then later redeployed and used for another purpose. If Verizon is capable of utilizing facilities and equipment in such a manner, and if it does in fact do so, then its costs of building any single fiber meet point arrangement could be different if equipment could be redeployed from another location. In other words, Verizon would not necessarily have to purchase new equipment if it could redeploy facilities from elsewhere. In addition, Verizon's ability to redeploy facilities would also address the question of whether Verizon would have so-called stranded investment in facilities that are deployed for a fiber meet arrangement with Charter. For these reasons the Department should over rule Verizon's relevancy objections.

As to Verizon's other objections, Charter is not asking for information of other entities, the request specifically identifies Verizon in the body of the request. Therefore, Verizon's objection that the request seeks information of others is unfounded.⁵

Verizon also claims that the information sought is not maintained in a centralized system or database. Although not a formal objection, Verizon uses this explanation as an apparent excuse not to respond. The response to this request does not require reference to a database, but can instead be addressed by the appropriate personnel with responsibility for network deployment in Massachusetts. Indeed, if the instances of such deployment and redeployment are so numerous that consulting normal practices and personnel is not sufficient, Verizon should at least indicate that they are too numerous to identify. The Department should reject Verizon's objections and order Verizon to respond to these requests.

⁵ Here again, Verizon refers to an entity, "Verizon MA, Inc." that, based on its response to Request No. 1.12, may not even exist except on a d/b/a name. As noted above, this point must be clarified.

Data Request 1.28

1.28 State whether Verizon, or its parent company, or another Verizon entity within the corporate family, currently has in its possession any of the following equipment which has not yet been deployed:

- (a) add / drop multiplexers;
- (b) OC3 cards;
- (c) LGX fiber panels;
- (d) Fiber network interface devices.

Verizon Response:

Verizon objects to this Information Request to the extent it requests information outside of MA on the grounds that such information is not relevant to this proceeding and is beyond the jurisdiction of the Department. Verizon also objects to this Information Request to the extent it requests information from Verizon entities other than Verizon MA, Inc., on the grounds that such entities are not parties to this proceeding. Verizon further objects to this request to the extent it seeks information on fiber systems Verizon has in its possession on the grounds that such information is not relevant to this proceeding (i.e., to mid-span fiber meet point arrangement between Verizon and another carrier) and therefore not reasonably calculated to lead to the discovery of admissible evidence. Finally, Verizon objects on the grounds that information responsive to this request is not readily available and would require a burdensome special study.

Without waiving its objections and in an effort to be responsive Verizon states that such equipment typically is ordered on a per-job basis and at any point in time Verizon undoubtedly would have some or all of the listed equipment in its possession in a staging warehouse pending installation.

Again, as with the previous data request, this request implicates Charter Issue 2, and the costs that Verizon incurs in deploying a fiber meet point arrangement. If Verizon has fiber facilities and other related equipment already in its possession ("in stock" so to speak) then it would not incur any immediate facilities costs if it could use such in stock facilities. For that reason it is relevant to the question of Charter Issue 2, and who is responsible for what costs in building the fiber meet point arrangement. The Department should therefore order Verizon to expand upon its response by providing a specific

answer to the request (whether Verizon *currently has in its possession* the identified equipment) instead of the vague and ambiguous response provided by Verizon.⁶

C. Data Requests Seeking Information Concerning the Location and Extent of Fiber Optic Facilities Deployed by Verizon

The third category of questions that Verizon has failed to provide responses to concern the location and extent of fiber optic facilities deployed by Verizon in Massachusetts. The question of where Verizon has deployed fiber optic facilities is directly relevant to two disputed issues in this case: Charter Issues 2 and 3.

The extent of Verizon-deployed fiber facilities is relevant to Charter Issue 2, which raises the question of cost responsibility, because it will help determine whether Verizon has already deployed fiber facilities that could be used in a fiber meet arrangement with Charter. To the extent that such costs have already been incurred by Verizon, and that there exists spare fiber, then Verizon will incur no immediate, direct costs in using such fiber in a fiber meet arrangement with Charter.

The extent of Verizon-deployed fiber facilities is also relevant to Charter Issue 3 because that issue raises the question of whether Verizon can limit its obligations (and at the same time increase Charter's obligations) with respect to the location of the fiber meet point arrangement, and the length of fiber deployed. If Verizon has already deployed fiber in many different locations in Massachusetts then it would seem unnecessary to arbitrarily limit Verizon's obligations to deploy such fiber as Verizon proposes (to no greater than three miles from the Verizon central office or no more than five hundred feet of fiber).

⁶

See note 4, *supra*, regarding corporate entities identified by Verizon.

Charter's requests in this area make the same basic request: identify where your fiber is located. Verizon's responses to these requests are almost all identical in terms of the objections raised (and the lack of responses provided). In those instances where Verizon's objections are identical this motion discusses such requests in one discussion. Thus, Verizon's responses to data requests 1.14, 1.17, and 1.24 through 1.27, are largely identical and are therefore discussed together immediately below.

Data Requests 1.24 – 1.27

- 1.14 Identify and describe those locations in LATAs 126 and 128 where Verizon has deployed any of the following network facilities or equipment in conjunction with a fiber meet arrangement:
 - (a) fiber optic lines or facilities;
 - (b) fiber optic terminals, including any optical OC3 cards;
 - (c) fiber network interface devices (or FNIDs);
 - (d) add / drop multiplexing devices.
- 1.17 Identify those communities in Massachusetts where Verizon's FiOS service is currently available. Also identify all communities in Massachusetts where Verizon intends to introduce its FiOS service within the next thirty six months.
- 1.24 Identify and describe all geographic locations that Verizon has deployed fiber optics, or fiber facilities, in LATAs 126 and 128.
- 1.25 Identify and describe any situation where Verizon has deployed fiber optics, or fiber facilities, to a length greater than five hundred feet from any central office to which the fiber is connected. Include in this response a statement of the additional incremental costs, beyond the cost of deploying the fiber the initial fiber hundred feet, to Verizon of deploying such facilities.
- 1.26 Identify and describe any situation where Verizon has deployed fiber optics, or fiber facilities, to a length greater than three miles from any central office to which the fiber is connected. Include in this response a statement of the additional incremental costs, beyond the cost of deploying the fiber for the first three miles, to Verizon of deploying such facilities.
- 1.27 Identify and describe the specific fiber optic facilities used to provide Verizon's FiOS services in Massachusetts.

Document Requests 2, 3, and 4

- 2. Any and all maps, diagrams, schematics, network plans, or other documents describing or identifying Verizon's fiber meet point arrangements in Massachusetts.

3. Any and all maps, diagrams, schematics, network plans, or other documents describing or identifying the location of fiber that Verizon has deployed, or will deploy within the next thirty six months, in Massachusetts.
4. Any and all documents that describe the network equipment and related facilities Verizon uses in fiber meet point arrangements in Massachusetts.

Verizon Responses (consolidated⁷):

Verizon objects to this Information Request on the grounds that the request seeks information that is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects on the grounds that the request seeks proprietary, confidential and highly competitively sensitive marketing plans and information. Finally, Verizon objects on the grounds that information responsive to this request is not readily available and would require an overly burdensome special study.

The parties are currently working to finalize a joint protective order and, once in place, Verizon's confidentiality objections will be moot. As to Verizon's relevancy objections, as explained above, the question of where Verizon has deployed fiber optic facilities (including as part of its planned fiber-based FiOS service) is directly relevant to the question of what costs Verizon will incur and whether or not there is any basis (or technical reason) to limit the location of the fiber meet point to no more than three miles from any Verizon central office. If Verizon has deployed fiber in those communities where Charter intends to seek a fiber meet arrangement there may be fiber deployed which is beyond Verizon's proposed distance limitations. If that is the case the Department can then determine whether or not it will approve Verizon's arbitrary limitations when deployed-fiber could be used by Verizon.

Verizon's final objection, that a response would require a special study, defies credibility. These requests (and associated document request) seek information on the location of certain fiber facilities. It is unimaginable that Verizon does not have maps

⁷ Verizon's objections to each of these data and document requests are nearly identical. Where additional objections are raised Charter has addressed such additional objections in the text of this motion.

and other documents that describe the location of the fiber already deployed (or to be deployed) by Verizon. Such information would be responsive to Charter's requests. Accordingly, the Department should order Verizon to respond to these requests and produce any documents containing information responsive to such requests.

IV. CONCLUSION

Therefore, for all of the foregoing reasons, Charter respectfully requests that the Department grant this Motion and enter an order consistent with the relief requested herein. Due to the very concise schedule in this proceeding Charter asks the Department to treat this motion on an expedited basis and to order Verizon to produce the information identified herein immediately.

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Dated: August 21, 2006

CERTIFICATE OF SERVICE

I, Gina Lee, hereby certify that on August 21, 2006, I served a true and correct copy of the foregoing Charter Fiberlink MA-CCO, LLC's Motion to Compel the Production of Information and Documents from Verizon Massachusetts via Federal Express and electronic copy upon the following:

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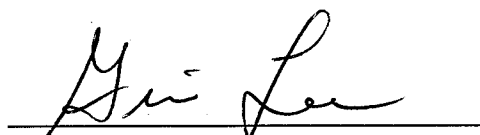
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